

U.S. Department of Transportation
Urban Mass Transportation Administration
Washington, D.C. 20590

CIRCULAR

UMTA C 9500.1

March 30, 1984

SUBJECT: INTERGOVERNMENTAL REVIEW OF UMTA PLANNING, CAPITAL AND OPERATING PROGRAMS AND ACTIVITIES

1. **PURPOSE.** This Circular provides guidance for implementing Executive Order 12372, Intergovernmental Review of Federal Programs, and 49 CFR 17, Intergovernmental Review of Department of Transportation Programs and Activities.
2. **REFERENCES**
 - a. Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966;
 - b. Section 401 of the Intergovernmental Cooperation Act of 1968;
 - c. Executive Order 12372, Intergovernmental Review of Federal Programs;
 - d. Intergovernmental Review of Department of Transportation Programs and Activities, (48 FR 29264) 49 CFR 17; and
 - e. DOT Order 4600.13, "Intergovernmental Review of Department of Transportation Programs and Activities," dated 10/3/83.

3. **APPLICABILITY**

This Circular is applicable to grants for planning, capital, and operating assistance made available under Section 3, 5, 8, 9A, 9, 16, and 18 of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601, et seq. It is also applicable to mass transportation projects funded under Title 23, 103(e)(4) (Interstate Transfer) and 104(b)(6) (Federal-Aid Urban Systems). Projects funded under Section 3(a)(1)(C) (Technology Introduction); Section 4(i) (Innovative Techniques); Sections 6, 10, 11, and 20 of the UMT Act and Section 320 of the Surface Transportation Assistance Act of 1978 are not covered by this Circular.

4. **EFFECTIVE DATE.** This Circular is effective for grant applications received on or after the date of issuance.

DISTRIBUTION: UMTA Headquarters Offices (U-W-2)
UMTA Regional Offices (U-X-2)

OPI: Office of Grants
Management

5. BACKGROUND

Until October 1, 1983, consultation between State and local officials and Federal agencies concerning Federal programs and activities had taken place through a process established by the Office of Management and Budget (OMB) Circular A-95, "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects." The A-95 system required state and local governments to follow prescribed procedures to review Federal programs and was implemented for UMTA programs by UMTA/FHWA joint regulations published on August 9, 1976. On July 14, 1982, Executive Order 12372 was issued. The Executive Order revoked OMB Circular A-95, and provided a new system of intergovernmental consultation involving a State process for review of Federal activities.

When state and local elected officials use this new process to comment on proposed UMTA projects, UMTA will have to address these comments. For those cases where the concerns cannot be accommodated, UMTA must provide a written explanation of its decision in a timely manner. This accommodation or explanation provision gives greater weight to state or local views than provided by Circular A-95. State and local officials can still make their views known directly to UMTA; however, under the final rule the requirement for UMTA to accommodate or explain only applies to recommendations made through a formal State process.

On June 24, 1983, the Department of Transportation published a final rule to implement the Executive Order at 48 FR 29264.

6. STATE PROCESS

A State process is the procedure established by a State, developed in consultation with local officials, to undertake intergovernmental reviews of Federal programs and activities.

After establishing a State process, the Governor must notify the Office of Management and Budget (OMB) of those Federal programs and activities which the State will review through its process and who will serve as the State single point of contact. This information is provided to UMTA by OMB through the Office of the Secretary of Transportation. UMTA has no review or approval role in the setting of a State process. There is no requirement that the State establish a process. However, for those States without a process, UMTA still has certain notification responsibilities which are discussed in paragraph 8.

A State has the option to designate an agency to serve as the single point of contact for transportation matters. If the State designates a transportation contact, this contact will be responsible for coordinating the review of all transportation activities among state, areawide, regional and local officials and for providing comments directly to UMTA.

Each State is free to establish its own review process and procedures best suited to its own situation. Consequently, some States may elect to review "programs of projects," such as the Transportation Improvement

Program (TIP), the Section 18 program of projects, etc., while others may choose to review project applications on an individual basis. Where the State elects project-by-project review, UMTA review and approval of program documents, such as the TIP and Unified Planning Work Program (UPWP) should proceed without regard to these coordination requirements. Individual project applications will, however, be affected by the State process review in these cases. Each UMTA Regional Office should contact the respective State single point of contact and request the specific process requirements UMTA program activities will be required to meet.

The final rule provides a maximum sixty (60) day review period, although a State may develop a process which is completed in less time if it desires. The 60 day period starts when the State single point of contact receives the required review materials (eg. TIP, UPWP, grant application, etc.) from the applicant. The presumptive date of receipt is 5 days from the date the materials are mailed to the State process.

The State process is not required to "approve" any program or project it reviews. Consequently, in the absence of a specific notification of "no comment", UMTA will presume that there are no comments upon expiration of the review period.

7. ACCOMMODATE OR EXPLAIN

If a State process review of an UMTA activity results in the provision of a formal State process recommendation through the single point of contact, UMTA is obligated to act upon the recommendation by either "accommodating" the State process recommendation or by explaining, to the State single point of contact, in writing, the reasons UMTA is taking an action contrary to the process recommendation. "Accommodation" in this sense means either accepting the recommendation or reaching a mutually agreeable solution with the State process. If an UMTA Regional Office decides not to accommodate a process recommendation, the Regional office must not approve the questioned activity (eg: TIP approval, grant approval etc.) until 10 days after the single point of contact receives the written explanation. The presumptive date of receipt is five days from the date the letter is sent, unless a telephone call is made to the State contact. If a call is made to the State contact, the 10 days start from the date of the call. If the process recommendation is accepted, no additional notice, beyond furnishing the completed Standard Form 424 (Part III) to the single point of contact, is necessary.

Should a process recommendation not be accepted, a copy of the written explanation must be furnished to UMTA Headquarters by the Regional Office for monitoring purposes at the time it is sent to the single point of contact.

8. UMTA PROCESS IN ABSENCE OF A STATE PROCESS

Where there is no State process, or where a program listed under the "applicability" paragraph is not included in a State's process, UMTA still has the responsibility to notify state, local and areawide officials of its activities and to consider any comments it receives.

This is required by the final rule in accordance with Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Section 401 of the Intergovernmental Review Act of 1968. Comments may be submitted to the applicant or UMTA for consideration, but no formal response is required in the absence of a formal State process.

In urbanized areas, the joint preparation of the UPWP and the TIP by the State, Metropolitan Planning Organization (MPO) and transit operators is sufficient to meet the intent of Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Section 401 of the Intergovernmental Review Act of 1968. Applicants, therefore, should ensure that their planning, operating and capital assistance needs are included in these MPO-endorsed documents.

In other than urbanized areas, UMTA program assistance is usually for grants under Section 3, 8, 16(b)(2) or 18. For these program elements, more limited notification processes will satisfy UMTA responsibilities under the final rule. These are covered in paragraphs 12 and 14.

9. ENVIRONMENTAL DOCUMENTS

If the State or an applicant decides to use the State process to review environmental impact documents, UMTA will instruct the applicant to have the State single point of contact forward all comments received to the applicant for subsequent transmittal to UMTA. The States are advised, however, that this is not the recommended means for accomplishing the review of environmental impact documents. The existing environmental regulation, 49 CFR 622, provides for more efficient and equally effective review and coordination procedures and its use is encouraged.

10. CERTIFICATION AND DETERMINATIONS

Notwithstanding application instructions previously published for various planning, capital and operating program grants, the applicant must also certify that it has complied with the provisions of the final rule. The following certification should be prepared for each application:

"Certification is given by _____, the applicant, with respect to its application for assistance pursuant to Section _____ of the Urban Mass Transportation Act of 1964, as amended, filed with the Urban Mass Transportation Administration (UMTA) that the recipient has complied with the provision of 49 CFR 17, Intergovernmental Review of Department of Transportation Programs and Activities.

In approving grants for assistance, the UMTA approving official must determine that these requirements were met. The determination should be based upon the receipt of the applicants certification.

11. PLANNING ASSISTANCE - URBAN

For those States including the Section 8 Planning and Technical Studies Program in their State process, applicants will be required to have the activity cleared through the State single point of contact before a Section 8 grant can be awarded. The review period provided for by the final rule is sixty (60) days which means that the UPWP or scope of work for the Section 8 grant, as appropriate, should be initiated into the State review process at least 60 days before the applicant plans on actually making application to UMTA. Concurrent review by UMTA and the State process is acceptable. Although UMTA has no direct control over the State process, the transit operators and MPOs, as potential applicants, are encouraged to work with the State single point of contact to develop procedures to allow the MPO to submit the UPWP for State process review. This will permit all planning projects in an urbanized area, including those to be funded under the Special Studies program, to be covered by a single review action.

Should a State process recommendation be provided to UMTA, the Regional Office must adhere to the "accommodate or explain" responsibility.

If there is no State process, or should the Section 8 program not be included in the State process, the development and endorsement of a UPWP and subsequent UMTA approval letter to the MPO is determined to meet the requirements of the final rule for UMTA to notify State and local entities of its Section 8 activities.

Where the State is the grantee for urbanized areas of under 200,000 population, paragraph 12 should be followed.

12. PLANNING ASSISTANCE - NON URBAN

As with the urbanized Section 8 Planning and Technical Studies Grants, State managed Section 8 grants are subject to review by the State single point of contact before a grant can be made. The sixty day (60) review period still applies and UMTA is still responsible to "accommodate or explain" in accordance with paragraph 7.

Should there be no State process, or should the State not include State managed Section 8 grants in the State process, UMTA's responsibilities will be satisfied by the State's preparation of, and UMTA's approval letter for, a State Work Program in support of the grant application.

Where a Section 8 grant is made directly to a local unit of government or a transit operator, the State level transit agency and the areawide review agency (if one exists) should be notified of the pending grant by the Regional Office and provided a reasonable time to comment upon the project prior to grant approval.

13. CAPITAL AND OPERATING ASSISTANCE - URBAN

For those States including the Section 3, 5, 9, 9A, 16(b)(2), 103(3)(4) (Interstate Substitution) and 104(b)(6) (Urban System) projects in their State process, applicants will be required to have the appropriate activities cleared through the State single point of contact before a grant can be awarded. The review period provided for by the final rule is sixty (60) days, which means that programs or projects (TIP's or applications, as appropriate) should be initiated into the State process at least 60 days before the applicant plans on actually making application to UMTA, although concurrent review, by UMTA and the State process is acceptable.

Transit operators and MPOs, as potential grant applicants, are encouraged to work with the State single point of contact to develop procedures that would minimize the use of project-by-project reviews, focusing instead on programming documents, specifically the TIP and annual (or biennial) element. Since all of the categories of projects covered by the final rule must, by regulation, be in the TIP, a single review by the State process that would cover all capital and operating program elements would be preferable to project-by-project review.

Should a State process recommendation be provided to UMTA, the Regional Office must adhere to the "accommodate or explain" responsibility.

Should there be no State process, or should one of the above noted capital or operating programs not be included in a State process, the development and endorsement of a TIP and annual (or biennial) element at the urbanized area level and the subsequent UMTA approval letter to the MPO is determined to meet the requirements of the final rule for UMTA to notify State and local officials of its capital and operating grant activities.

14. CAPITAL AND OPERATING ASSISTANCE - NON URBAN

For those States including the Section 3, Section 16(b)(2) and Section 18 programs in their State process, the applicant will be required to have the activity cleared through the State single point of contact before a grant can be awarded.

Applicants are encouraged to have the State process procedures set to allow review of the Section 16(b)(2) and Section 18 programs of projects so the review can be moved upstream of the grant application process. In the instances where a non-urbanized Section 3 project is proposed, there is little alternative to an individual project review by the State process.

The sixty day (60) review period applies and UMTA is responsible to "accommodate or explain" in accordance with paragraph 7.

Should there be no State process, or should the State process not include Section 16(b)(2) and Section 18 grants, UMTA's notification responsibilities will be deemed to be satisfied by the notification of the Section 16(b)(2) and Section 18 apportionments in the Federal Register. Upon notification, a reasonable period should be allowed before any grant supporting these activities is approved to provide opportunity for comment.

Should there be no State process, should the State process not include non-urbanized Section 3 grants, or should a Section 3 grant be made directly to a local unit of government or transit operator, the State level transit agency, unless that agency is the applicant and the areawide review agency (if one exists) should be notified of the pending Section 3 grant by the Regional Office and provided a reasonable time to comment upon the project prior to grant approval.

15. GRANT APPROVAL

Upon receipt of an application and the certification required by paragraph 9, a grant may be approved as long as there are no outstanding process recommendations with unresolved accommodation issues. As noted in paragraph 6., a non-response by the single point of contact will be presumed as "no comment" after the review period has expired.

OMB Form SF-424 is still in use under the new system and is still required as part of the grant application process under OMB Circular A-102. Part III of SF-424 should continue to be completed and returned to the State single point of contact upon grant approval.



Ralph L. Stanley
Administrator

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